

# INTERNATIONAL HUMANITARIAN LAW IN ACTION: FINDING RESPECT AND COMPLIANCE

Rusniah Ahmad  
*Universiti Utara Malaysia*

## Introduction

International humanitarian law is a part of international law and in effect must have the same relevancy and respect as its brethren. International humanitarian law known also as the law of war encounters many controversies in its efforts to fulfil its term of implementation in both wartime and peacetime.

Supporters of international law argue that to be relevant it must represent some natural conception of what is right. International law must also be in the form of a force of stability and progress due to the reason that is obvious that law needs to be further strengthened and then enforced. The discussion on whether international humanitarian law is still relevant in protecting victims of war today must take into account these important factors. In fact the law was established with ambitious themes such as upholding the rule of law, respect for human rights, democracy and good governance. One of the most important key issues in international humanitarian law regarding the protection of victims of war is to promote respect for human rights especially in areas of military conflict where mercy and humanity could not find their place. The universality of human rights is present and acknowledged whether in civil, political, economic, social or cultural during time of peace or of war. Therefore the concept of human rights is not localised but must include the concept of humanity as a whole.

## Embracing Changes

Globalisation affects the world and most countries are responding to changes somehow. Much emphasis has been placed on the rule of law and the strengthening of international law whether human rights, humanitarian law or refugee law in order to seek respect and compliance from all countries. As we know it if these efforts fail to bear any fruits then the world is heading to anarchy. Globalisation has many dimensions that affect human rights and issues like a fair international financial system has strong relevancy to the lives of poorer nations and poverty. Policies concerning how to deal with terrorism may have an impact on

genuine refugee problems and the freedom of movement of many innocent nationals. Since the world today is obsessed with terrorism after the events of September 11<sup>th</sup> many governments are compelled to fortify their own national laws that restrict citizen's rights in many ways. Surely there are many issues beyond terrorism that could be dealt with in a more acceptable manner than the present.

## The War on Terror

The war on terror is an impact from the events of September 11<sup>th</sup> and has given somewhat new justifications for many violations of human rights. The politics of the September 11<sup>th</sup> tragedy have created the concept of "good victims" and "bad victims". Those held without being given a fair trial or given due process as hailed by the US government in Guantanamo Bay for example have been categorized as "bad victims" and therefore should not be treated as a human being in a humanitarian manner. Thus even though many of them were held as prisoners of war or as a suspect of an offence during a state of unrest following military conflicts or regime change they were not given the rights that are due to them. Basic rights such as access to a defence lawyer or contact with families are something that cannot be denied indefinitely to any detainee or any human being for that matter. It is the duty of the implementers of international humanitarian law to advise and influence the United States government that after a reasonable period of time those detainees at Guantanamo Bay should be given justice through a fair trial or returned to their countries of origin if there is a good legal system to deal with them. No other alternatives remain if there are no charges against these people than to just set them free. In this context the international humanitarian law cannot compromise its neutral and impartial agenda that is to uphold the rule of law and to preserve the protection of human rights at any time and place. Instead of treating the Guantanamo Bay problem in isolation the detainers should take this solution as the commonsense approach to the problem.

## The "Good" Victim

In times of war, soldiers or military troops are often described as the "good victims" and are sympathised by their fellow nationals especially in their homeland. However it is in times of war that these "victims" may become the perpetrators of war crimes and hostile to innocent civilians. The distinction between civilians and the foes in an armed conflict may be blurred sometimes and people are killed for many reasons due to apprehension and unrest. Furthermore we are not only talking about the act of killing and maiming but also destruction of properties. Therefore when military personnels are attacked or counter attacked due to unwise actions to civilians they are portrayed as the victims of war. Some are sent home without any punishments since they are diagnosed as suffering from mental effects and pressures of the war.

Article 3 of The Hague Convention No.IV and Article 91 of Protocol I provide that a party to the conflict "shall be responsible for all acts by persons forming part of its armed forces." State will not assume responsibility for acts committed as a private person such as theft or sexual assaults by a soldier during leave in an occupied territory. However, in wartime and with regard to acts governed by international humanitarian law, members of the armed forces are always on duty and never act in a purely private capacity. As private persons, they would never have entered into contact with enemy nationals or acted on enemy territory. Therefore there can never be any good victim or bad victim as long as they are victims of war or aggression and perpetrators of violent acts cannot escape liability.

However international humanitarian law with its neutral agenda must avoid treating victims and aggressors alike. The concept of international responsibility must also be one of the principle themes of this area of law and a claim to champion human rights throughout the world and to defend democracy must be applied without any exceptions.

It is necessary that nations at war must be able to set limits on the means and methods of warfare so as to ensure that international humanitarian law could accomplish its mission plus to ensure that the laws are fully respected. Compliance with the law must be in place at all times especially during wartime. This is the crucial period whereby all parties should be monitored closely. States must ensure the structures and administrative arrangements and personnel are prepared for such measures. This is also done to ensure that violators of humanitarian law are not only prevented but punished for their actions.

Hence nation states must be able to use human rights as an effective instrument by codifying the guarantees of these rights. The idea that every person, just because he is a person possesses inalienable rights could be realised through the codification of these rights in written charters. Many countries have been able to provide for such guarantees but to what extent all differ according to the circumstances. In most states a state of war would give those responsible or involved the upper hand and the rights of innocent civilians do not matter by reason of necessity or emergency. This is where the international humanitarian law treaties could play a significant role to ensure the commitment of those state parties to adopt national measures of implementation in the form of national legislation. Apart from taking administrative measures, translating the treaties into the national language, there must also be a process to familiarise the parties in armed conflict with the rules in international humanitarian law so that their behaviour in times of unrest are intervened by international guidelines. Members of the public or civilians, civil servants, government officials, students and teachers, medical personnel and the media community should also be exposed to the learning of these rules to reduce the level of ignorance. Another important measure is to ensure that the identification process of cultural property, civil defence works and installations containing dangerous forces should be identified by the special signs provided for under the international humanitarian law. Medical religious personnel, journalists and staff assigned to specific tasks should be given identity cards protecting the bearers. This will ensure that only those authorised are permitted to enter into conflict zones so as to reduce innocent casualties of war.

Taking those responsible in violating the rules protecting civilians and cultural properties to boot must also be a priority so as to give the law the autonomy of respect that it deserves. Therefore the states must ensure that all necessary steps are taken to prosecute and impose sanctions on violators of the rules making such actions criminal offences under national law. Furthermore the nation states must provide the support of existing national laws that normally governs the country and to avoid using emergency laws and security regulations to ensure no occurrence in the miscarriages of justice or abuse of state powers. The national legislation of State Parties must also provide adequate system of due process whereby the judicial body is not suspended but are able to secure justice without fear or favour.

International standards are considered as an important source of framework by reason of the fact that the coverage is intended to apply universally rather than regionally. Therefore derogatory provisions accommodates the right of the state to abrogate or limit the exercise of fundamental rights during exceptional circumstances as provided in Article 4 of the International Covenant on Civil and Political Rights (ICCPR).

Furthermore international standards can contribute tremendously in assisting the court to exercise its judicial discretion so as to fulfil the criteria associated with a more principled decision making. International standards can also provide relevant safeguards for the states to prevent unwarranted emergency proclamations. It is therefore important that domestic safeguards be maintained or balanced with international human rights standards the likes of international humanitarian law.